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MEMORANDUM

TO: Judge Hinojosa, Chair
Tim McGrath, Staff Director

FROM: Linda Maxfield
Office of Policy Analysis

DATE: February 28, 2005

SUBJECT: Numbers on Post-Booker Sentencings

Attached is a table with a look at post-Booker cases received, coded, and edited as part of the Commission's post-Booker project. The numbers are prepared using data extracted at close-of-business on February 17, 2005.

- 65.7 percent are within the guideline advisory range. (This compares to 65.0% in FY02.)
- 2.0 percent are above the advisory guideline range. (This compares to 0.8% in FY02.)
 - Comprising the 2.0 percent of sentences above the guideline range is 0.9 percent classified as an upward departure from the advisory guidelines range. A total of 1.1 percent of all cases either cite no reason, or cite US v Booker or 18 USC § 3553 as a reason, for the sentence above the advisory guideline range.
- 32.4 percent of the sentencings are below the advisory guideline range. Most of these sentences are government-sponsored below-range sentences (20.3%), compared to other below-range sentences (12.0%).
 - *Government-sponsored below-range sentences:* Among the 20.3 percent of cases with a government-sponsored downward departure, the largest proportion (approximately 70% of this category) are due to §5K1.1 substantial assistance departure sentences.
 - *Other below-range sentences:* 12.0 percent of all sentences are below the advisory guideline range for reasons other than a government-sponsored downward departure. The 12.0 percent is comprised of 3.7 percent classified as a “downward departure” from the advisory guideline range. The remaining 8.4 percent either cite no reason, or cite US v Booker or 18 USC § 3553 as a reason, for the below-range sentence.

Comparison of Sentence Imposed and the Advisory Guideline Range

	N	%
TOTAL¹	1,986	100.0
WITHIN ADVISORY GUIDELINE RANGE	1,304	65.7
ABOVE ADVISORY GUIDELINE RANGE	39	2.0
“Upward departure” from the advisory guideline range	17	0.9
Otherwise above the advisory guideline range ²	22	1.1
BELOW ADVISORY GUIDELINE RANGE	643	32.4
Government Sponsored	404	20.3
§5K1.1 Substantial Assistance departure	281	14.1
§5K3.1 EDP/Fast-Track departure	96	4.8
Departure pursuant to a plea agreement	27	1.4
Other	239	12.0
“Downward departure” from advisory guideline range	73	3.7
Otherwise below the advisory guideline range ³	166	8.4

¹Of the 2,056 cases sentenced on or after January 12, 2005, and cumulatively received, coded and edited at the U.S. Sentencing Commission, there are 70 cases excluded from the table due to missing information preventing the comparison of the sentence and the guideline range.

²All cases explicitly citing either US v Booker or 18 USC § 3553 as a reason for a sentence above the advisory guideline range are classified into this category. This category also includes cases that do not provide a reason for the above-guideline sentence.

³All cases explicitly citing either US v Booker or 18 USC § 3553 as a reason for a sentence below the advisory guideline range are classified into this category. This category also includes cases that do not provide a reason for the below-guideline sentence.

SOURCE: United States Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extraction as of February 17, 2005). Numbers may not sum to 100 percent due to rounding.